



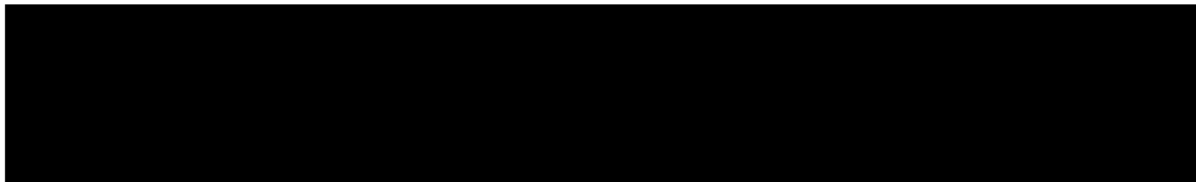
Eric Gonzalez
District Attorney

**DISTRICT ATTORNEY
KINGS COUNTY**

350 JAY STREET
BROOKLYN, NY 11201-2908
(718) 250-2000
WWW.BROOKLYNDA.ORG

Saeng Bounyasane
Assistant District Attorney

July 22, 2021



In connection with the above-named case, the People voluntarily provide the following information regarding:

MOS NAME: MARK XYLAS

MOS TAX: 948160

in satisfaction (to the extent applicable) of their constitutional, statutory, and ethical obligations. In addition to any information provided below, disciplinary information regarding this officer may exist online at the following websites: <https://www1.nyc.gov/site/ccrb/policy/MOS-records.page>, <https://nypdonline.org/link/13>, and <https://www.50-a.org>. The People make no representation regarding the accuracy of any information contained on these websites. In addition, the People have provided all lawsuits known to the People through NYPD documents, the NYC Law Department's public website of civil suits filed against officers (<https://www1.nyc.gov/site/law/public-resources/nyc-administrative-code-7-114.page>), and orally relayed to the People by officers. Please note that additional cases may or may not exist on the following public websites: <https://pacer.uscourts.gov/>, <https://iapps.courts.state.ny.us/webcivil/FCASMain>; and <https://iapps.courts.state.ny.us/nyscef/Login>. The People reserve the right to object to the use or introduction of any or all disclosures provided below and any other potential impeachment information.

Disclosure # 1:

BY AN UNPUBLISHED DECISION AND ORDER IN PEOPLE V. XXX (SUP. CT., KINGS CTY., MAY 18, 2016, IND. NO. 2526/15), JUSTICE JOHN INGRAM GRANTED DEFENDANT'S MOTION TO SUPPRESS FOLLOWING A COMBINED MAPP/HUNTLEY/DUNAWAY HEARING ON APRIL 27 AND 28, 2016. THE PEOPLE PRESENTED TESTIMONY FROM THREE WITNESSES - POLICE OFFICERS MARK XYLAS, SHIELD NUMBER 11251, RYAN GALVIN, SHIELD NUMBER 08096, AND VAUGHAN ETTIENNE, SHIELD NUMBER 29839 - REGARDING THE STOP AND SUBSEQUENT SEARCH OF DEFENDANT'S CAR, WHICH RESULTED IN THE RECOVERY OF A FIREARM. ALTHOUGH FINDING A LAWFUL BASIS FOR THE STOP, JUSTICE INGRAM CONCLUDED THAT TO THE EXTENT THAT ALL THREE OFFICERS TESTIFIED THAT THEY HAD SMELLED THE ODOR OF MARIHUANA COMING FROM THE CAR'S INTERIOR, THAT TESTIMONY WAS NOT CREDIBLE. THE COURT ALSO FOUND THAT THERE WAS NO CREDIBLE TESTIMONY SUPPORTING OFFICER XYLAS'S ASSERTION THAT DEFENDANT HAD GIVEN CONSENT FOR A SEARCH OF THE VEHICLE. AS A RESULT OF THE COURT'S DECISION, THE INDICTMENT WAS DISMISSED. THE COURT'S DECISION IS ATTACHED. THE NAME OF THE DEFENDANT HAS BEEN REDACTED.

Disclosure # 2:

THE NYPD ENTERED A DISPOSITION OF MINOR PROCEDURAL VIOLATION, DATED 03/18/2020, AGAINST MOS XYLAS.

CASE STATUS: CLOSED ON 10/12/2020

Disclosure # 3:

THE NYPD SUBSTANTIATED THE FOLLOWING ALLEGATION (S), DATED 03/04/2021, AGAINST MOS XYLAS:

1. REPORT INCOMPLETE/INACCURATE - PROPERTY CLERK INVOICE
2. INVOICE DISCREPANCY - BANK DROP - SHORTAGE (NOT COUNTERFEIT)

CASE STATUS: CLOSED ON 03/21/2021

ACTION TAKEN: VERBAL OF INSTRUCTIONS

Disclosure # 4:

THE PEOPLE ARE AWARE OF THE FOLLOWING FEDERAL CIVIL RIGHTS ACTION(S) AND/OR STATE TORT CIVIL LAWSUIT(S) IN WHICH THE INDICATED OFFICER HAS BEEN NAMED AS AN INDIVIDUAL DEFENDANT. NOTE, THE DISPOSITION INFORMATION MAY NOT BE CURRENT:

PLAINTIFF	DOCKET	COURT	FILED	DISPOSED	DISPOSITION
Ebonique Julien	14-CV-9942	S.D.N.Y.	12-17-14	12-29-15	Settlement, without admission of fault or liability
Ramsey Baines	15-CV-1472	E.D.N.Y.	3-20-15	3-11-16	Rule 68 Judgment settlement, without admission of fault or liability
Edgar Connor	15-CV-2590	E.D.N.Y.	5-6-15	3-1-17	Settlement, without admission of fault or liability
Marie Thomas	518702/2017	Kings Cty. Sup. Ct.	9-27-17		Pending
Stanley Clark	15-CV-4961	E.D.N.Y.	8-24-15	4-15-16	Settlement, without admission of fault or liability
Rufus Whitney	15-CV-5176	E.D.N.Y.	9-6-15	4-26-16	Settlement, without admission of fault or liability
Earlene Fulmore, et al.	16-CV-904	E.D.N.Y.	2-23-16	5-11-17	Settlement, without admission of fault or liability
Frontis Braxton	16-CV-5164	E.D.N.Y.	9-16-16	1-26-18	Settlement, without admission of fault or liability
Monifa Greene, et al.	15-CV-6436	E.D.N.Y.	11-10-15		Pending, defendants' filed motion for summary judgment
Scott Faine	11-CV-3299	E.D.N.Y.	7-8-11	4-17-12	Settlement, without admission of fault or liability
Derrick Rouse	13-CV-5984	E.D.N.Y.	10-29-13	8-18-14	Settlement, without admission of fault or liability
Harvey McManus	501655/2017	Kings Cty. Sup. Ct.	1-26-17		Pending
Chris Berry*	0000034/2015	Kings Cty. Sup. Ct.			

* Legal Aid's "Capstat" website states that Sgt. Xylas is a named defendant in the Berry civil suit, however, at the time the above research was conducted the civil complaint was not available on either of the state court

websites, WebCivil and NYSCEF, and so this entry is unconfirmed.

BASED UPON CCRB DOCUMENTS UP TO DATE THROUGH MAY 7, 2021, THE PEOPLE ARE AWARE OF THE FOLLOWING CCRB SUBSTANTIATED AND/OR PENDING ALLEGATIONS AGAINST THIS OFFICER:

Disclosure # 5:

CCRB CASE: 201407556

REPORT DATE: 07/25/2014

INCIDENT DATE: 07/24/2014

CCRB SUBSTANTIATED ALLEGATION(S):

1. ABUSE – PREMISES ENTERED AND/OR SEARCHED
 2. ABUSE – THREAT TO DAMAGE/ SEIZE PROPERTY
- NYPD DISPOSITION: APU: NOT GUILTY, NO PENALTY

OTHER MISCONDUCT NOTED:

1. OMN – OTHER MISCONDUCT

Disclosure # 6 (PENDING):

CCRB CASE: 201906066

REPORT DATE: 07/11/2019

INCIDENT DATE: 06/19/2019

PENDING CCRB ALLEGATION(S):

1. ABUSE – ENTRY OF PREMISES
2. ABUSE – PROPERTY DAMAGED
3. ABUSE – SEARCH OF PREMISES

Disclosure # 7 (PENDING):

CCRB CASE: 202003614

REPORT DATE: 05/28/2020

INCIDENT DATE: 05/27/2020

PENDING CCRB ALLEGATION(S):

1. Abuse - Vehicle stop

Disclosure #8 (PENDING):

CCRB CASE: 202006318

REPORT DATE: 09/17/2020

INCIDENT DATE: 09/16/2020

PENDING CCRB ALLEGATION(S):

1. Abuse—Frisk
2. Abuse—Search (of person)

Eric Gonzalez
District Attorney
Kings County

SEE ATTACHMENT BELOW.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CRIMINAL TERM, PART 21

-----X
THE PEOPLE OF THE STATE OF NEW YORK,

Decision and Order
Indictment No. 2526/15

-against-



Defendants,

-----X
Ingram, J.

Defendant has been indicted and charged with Criminal Possession of a Weapon in the Third Degree and other related charges. He filed motion to suppress the gun and his statements to the police. On April 27, 2005, this Court held a combined Dunaway, Mapp hearing. Based upon the credible evidence adduced at the hearing, legal arguments of counsel, written memorandum of law submitted by counsel, and applicable law, the suppression motion is granted in its entirety.

Findings Of Fact

The People presented three witnesses, Police Officers Mark Xylas, Vaughn Ettienne, and Ryan Galvin. Defendant testified on his own behalf and also presented Desmal Body, a passenger in his car. Officer Mark Xylas has been a member of the New York City Police Department for approximately seven years. On April 1, 2015, he was assigned to Anticrime Unit. At approximately 5:05 p.m., he was in an unmarked police car with Officers Galvin and Ettienne. He observed a red Chevy Impala making a turn from Decatur Street onto Ralph Avenue. He testified that the Chevy had heavily tinted windows. He stopped the

Chevy at the intersection of Ralph and Bainbridge Avenue for excessively tinted windows. He and his partners exited the car and approached the driver's side of the Chevy. Officer Xylas testified that he was concerned with his safety because he could not see inside the car. He spoke with the driver of the Chevy, later identified as Defendant, and requested his license, proof of insurance and registration. While Defendant produced his license and registration, he produced an expired insurance card. Officer Xylas testified that while he was standing by the car, he smelled an odor of marijuana coming from inside the car. He testified that he was familiar with the scent of marijuana because he had made many marijuana related arrests, seized marijuana and was trained in the identification of marijuana. Officer Xylas admitted he never testified about smelling marijuana during his Grand Jury testimony, nor did he document it in his memo book. He asked Defendant to exit the car. As he exited the car, he escorted him to the rear of the Chevy and Defendant stood with Officers Galvin and Ettienne and the passenger of the car, Desmal Body. While Officer Xylas was standing near the driver's side door, he asked Defendant if there was any contraband or anything illegal in the car and could he look into the car. Officer Xylas testified that Defendant stated there was no contraband and that he could look in the car. He began to search the immediate area where Defendant and Mr. Body were seated. He looked under the front driver's seat and recovered a large fixed blade knife. He removed the knife and asked Defendant why he had the knife. Defendant said it was for work. Officer Xylas continued to search and opened the center armrest and observed a black taser stun gun. He turned it on

and observed electricity pass through the prongs. He made a hand signal to Officers Ettienne and Galvin to place Defendant and Mr. Body under arrest.

Officer Xylas testified that it is NYPD policy, when writing a traffic summons, to check if the person receiving the summons has an active warrant. He stated that he checked for warrants back at the command and discovered that Defendant had an active warrant. Officer Xylas stated that since the insurance card was expired, he could not let Defendant drive away in the car. Officer Xylas brought the Chevy back to the command and Officer Ettienne conducted an inventory search.

Police Officer Vaughan Ettienne has been a member of the New York City Police Department for approximately five and a half years. On April 1, 2015, at approximately 5:05 p.m. he was with Officers Galvin and Xylas in the vicinity of Bainbridge and Ralph Avenues. They stopped a red Chevy Impala because the windows were heavily tinted. He testified that he smelled a slight odor of marijuana coming from the Chevy. Officer Ettienne went to the back of the Chevy with Defendant. He observed Officer Xylas recover a stun gun and a knife from the Chevy. Officer Ettienne stated that he heard Officer Xylas ask Defendant about the knife and why he had it. Defendant stated that he was a flagman at a construction site and he needed some form of protection because he would have altercations with drivers. Officer Ettienne said he never heard Officer Xylas ask Defendant if he could search the car. Defendant and Mr. Body were placed under arrest.

The Chevy was brought to the 81st Precinct and Officer Ettienne conducted an

inventory search based on 218-13 of the Patrol Guide. Officer Ettienne testified that the purpose of the inventory search is to safeguard property and to protect against accusations of theft. Pursuant to an inventory search, he could search the driver and passenger compartment of the vehicle, the glove box, the center console, and the trunk. During the inventory search of the vehicle, specifically the trunk of the vehicle, he recovered a "machine gun" (actually an automatic rifle) and various types of ammunition. He also recovered a hollowed out can from the trunk. Officer Ettienne testified that the can was consistent with items used to store and conceal marijuana and he smelled an odor of marijuana coming from the can.

Police Officer Ryan Galvin has been a member of the New York City Police Department for approximately five and a half years. On April 1, 2015, at approximately 5:05 p.m., he was working with Officers Xylas and Ettienne. He and his partners conducted a car stop on the corner of Bainbridge and Ralph Avenues. Officer Galvin testified that they pulled the car over for excessively tinted windows. He approached the passenger side of the car. The passenger door opened and Officer Galvin smelled the odor of raw marijuana coming from inside the car. Officer Galvin testified that he had experience and training in the identification of marijuana and was familiar with the odor of marijuana. He asked the passenger, Mr. Body, to exit the car. He asked him if he had any weapons and he stated no. Officer Galvin conducted a pat-down of Mr. Body and then walked him to the back of the car. Officer Galvin observed Officer Xylas at the driver's side of the car and observed

him pull out a large hunting knife. He heard Officer Xylas ask Defendant why he had the knife. Defendant responded that he was a flagger and he used it for work. Officer Galvin testified that he never heard Officer Xylas ask Defendant if he could search his car. Officer Galvin stated that Officer Xylas went back inside the car and when he came out of the car, he gave Officer Galvin the signal (crossed wrists) to handcuff Defendant and Mr. Body. Officer Galvin placed both men in handcuffs and Officer Xylas showed him the taser. Officer Galvin brought Defendant and Mr. Body to the 81st Precinct. The car was also brought to the 81st Precinct. Officer Ettienne conducted an inventory search of the car. At approximately 8:00 p.m., Defendant made a video-taped statement. ADA Jacob Uriel and Officer Galvin were present. ADA Uriel provided Defendant with his Miranda warnings. The videotaped statement, with the Miranda warnings, was admitted into evidence at the hearing. Defendant stated, in sum and substance, that all the contents inside the vehicle were his.

The Defense Case

Defendant called Desmal Body to testify on his behalf. On April 1, 2015, at approximately 5:00 p.m., Mr. Body was a passenger inside Defendant's car. He was going with the Defendant to his parole program. While they were on the way to the program, he asked Defendant to stop at a liquor store so he could get a bottle of wine. They were on their way to a liquor store and were pulled over by an unmarked police car. Two officers walked up to the car. One officer talked to Defendant and another officer stood by the passenger side

door. Mr. Body stepped out of the car and an officer frisked him. An officer told him and Defendant to stand at the back of the car. One officer searched the car and asked Defendant about a knife. Defendant stated that he was a flagger and used it for work. Then the officer searched the car again and recovered a taser. Mr. Body testified that he never heard any officer ask Defendant if he could search the car. Mr. Body testified that he never saw or smelled marijuana while he was sitting in the car, nor did he or Defendant smoke marijuana while they were in the car. Defendant and Mr. Body were placed under arrest.

Defendant testified on his own behalf. Defendant has been on parole since 2012. On April, 1, 2015, at approximately 5:00 p.m., Defendant was going to a drug program through parole. He went to the program three times a week and was drug tested each time he attends the program. He testified that he never tested positive for drugs. Defendant testified that he had one week left in the program. On April 1, 2015, Mr. Body accompanied Defendant so he could sit in the car and wait for Defendant. He was driving and pulled over in front of a liquor store on Bainbridge Avenue. Police officers pulled in back of his car. Officers approached his car and asked for his license. Defendant gave his license, registration and insurance card. They informed him that his insurance was expired. He told them it was not. Defendant produced a copy of a valid insurance card during the hearing. The officers asked him to exit the car. Defendant and the passenger of the car exited the car and went to the back of the car. One of the officers started to search the car. He testified that no officer ever asked him for consent to search the car. Defendant denied having any

marijuana in the car. He testified that one officer searched the car and he recovered a knife from inside the car. The officer asked Defendant why he had the knife and Defendant told him that he worked construction as a flagger and used it for his personal protection. No marijuana was found the car, trunk or on either of the occupants.

Conclusions of Law

The People have the burden of going forward with credible evidence tending to show that the police acted lawfully when they stopped defendant's vehicle, and Defendant has the burden of proving by a preponderance of the evidence that the police acted illegally. The police may stop a vehicle for a Vehicle and Traffic Law violation such as excessively tinted windows. People v. Ingle, 36 N.Y.2d 413 (1975); People v. Osborne, 158 A.D.2d 740 (3rd Dept. 1990); People v. Andeliz, 3 Misc.3d 384(Sup Ct, Kings County 2004); Vehicle and Traffic Law § 375(12-a)(b). The degree of suspicion required to justify a traffic stop for a Vehicle and Traffic Law violation is minimal. "All that is required is that the stop be not the product of mere whim, caprice, or idle curiosity. It is enough if the stop is based upon 'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion.'" Ingle, 36 N.Y.2d at 420, quoting Terry v. Ohio, 392 U.S.1, 21 (1968). Any underlying pretext for the stop is irrelevant. People v. Robinson, 97 N.Y.2d 341 (2001).

The Court finds that the police were justified in stopping Defendant's car for having an illegal window tint. The courts have regularly recognized stops for alleged window tint

violations to have been reasonable and appropriate. People v. Vonthaden, 13 Misc.3d 408 (Dist. Ct. Nassau Co.)(holding that officer's observation of tinted windows and his inability to identify driver were proper predicate for stop); People v. Andeliz, 3 Misc.3d 384 (Sup.Ct. Kings Co. 2004)(holding that it was sufficiently obvious to police that windows in question excluded excessive amount of light though no tint-meter was used and these officers were not expert in fine points of statute or its enforcement). In the instant case, the officer testified that he knew the tint was excessive because he could not see inside the vehicle. "An officer's testimony that the window tint is too dark to identify the driver is sufficient to establish reasonable suspicion to conduct a vehicle stop based on a traffic violation." People v. Gonzalez, 24 Misc.3d 1243(Sup Ct, Bronx County 2009). Since the police reasonably believed that the tinted windows of the car constituted a violation of the Vehicle and Traffic Law, their stop of the car was lawful. People v. Ingle, 36 N.Y.2d 413(1975); People v. Edwards, 222 A.D.2d 603(2d Dept. 1995).

The People argue that the officers had probable cause to search Defendant's car because they smelled the odor of marijuana emanating from Defendant's car. It is well-settled in the State of New York that once officers detect the distinctive odor of marijuana emanating from the car, this independently establishes probable cause to search the car and its occupants. People v. Chestnut, 43 A.D.2d 260 (1974); People v. Badger, 52 A.D.3d 231 (1st Dept. 2008). However, such probable cause must be supported by credible facts which establish reasonable cause to believe that a person has violated a law. Credibility is best determined by the trier

of fact who has had the advantage of hearing and observing the character and demeanor of the witness. People v. Batista, 235 A.D.2d 631 (2d Dept. 1997). Moreover, testimony is incredible as a matter of law only when it is “impossible of belief because it [was] manifestly untrue, physically impossible, contrary to experience, or self-contradictory”. People v. Garafolo, 44 A.D.2d 86, 87 (2d Dept. 1974); People v. Crosby, 15 A.D.3d 492 (2d Dept. 2005); People v. Stroman, 83 A.D.2d 370, 373 (1st Dept. 1981). Based on the evidence presented at the hearing, the Court finds the testimony of the officers not credible. The officers testified that while they were speaking to Defendant and Mr. Body, they smelled marijuana emanating from the car. While all three of the officers testified to smelling the odor of marijuana, no marijuana was recovered from the car or the occupants. In addition, Defendant testified that he was driving to a drug program, for marijuana, when he was detained. He attended the program for 83 days. He went three times a week and was drug tested each time he attended the program. Defendant consistently tested negative. It strains the bounds of credulity to imagine Defendant smoking marijuana on his way to a drug program where he knows he will be tested for drugs. In addition, Officer Xylas never testified about smelling marijuana in the Grand Jury nor did he note it in his memo book. No credible explanation was provided for the lack of any reference to an odor of marijuana in police paperwork or Grand Jury, even though the People claim this odor of marijuana constitutes the basis for the legality of the search. Therefore, based on the evidence produced at the hearing, the evidence does not support that the search of the car was lawful.

The People argue that even if the Court does not believe that the officers smelled marijuana emanating from the car, Officer Xylas received consent by Defendant to search the car. Once again, this Court finds that credible testimony adduced at the hearing provides no basis to support the finding that Defendant gave consent to search the car. Officer Xylas testified that he asked Defendant if he could search the car while Defendant was standing at the back of the car with Mr. Body and Officers Ettienne and Galvin. However, none of the other witnesses testified that they heard Officer Xylas ask Defendant for consent to search the car. Both Officers Galvin and Ettienne testified that he heard Officer Xylas ask Defendant why he had the knife but he never heard him ask him if he could search the car. While they heard other conversations between Officer Xylas and Defendant, they never heard this crucial conversation. In addition, nothing was documented in any police paperwork about Defendant providing police consent to search the car.

The People allege that, even assuming any impropriety surrounding the search, the physical evidence seized should not be suppressed due to inevitable discovery. The People argue that since Defendant could not produce an unexpired insurance card, the officers had to drive the car to the precinct and conduct an inventory search. In addition, the People allege that since Defendant had a warrant, the police had to arrest him and impound his car, resulting in an inventory search. The inventory search would result in the seizure of the automatic rifle located in the trunk. V.T.L 319 states that every person who operates a vehicle registered in this state must produce an insurance identification card when requested by a police officer.

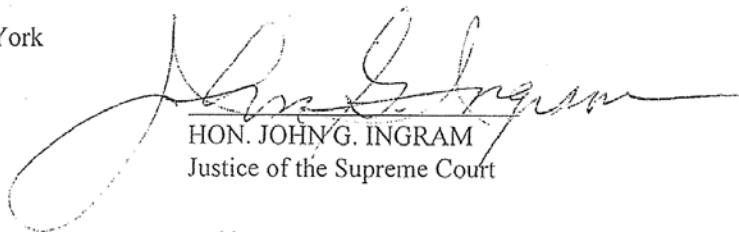
Defendant did produce an insurance card but it was expired. Based on the evidence produced at the hearing, Defendant did possess a valid insurance card. It strains the bounds of credulity to imagine that Officer Xylas would not have simply made a phone call to check Defendant's insurance. It seems to this Court that the main and only reason to bring the car to the precinct was to conduct an inventory search. In addition, there was no evidence that had the police just detained Defendant for tinted windows, they would run his name for a warrant. In fact, the police did not run Defendant's name for warrants until he was at the police station. No attempt was made to check for warrants at the scene. Therefore, there is nothing to support the People's argument that Defendant would have been detained due to an active warrant.

Furthermore, the statements made by Defendant in the precinct that night are clearly a direct result of the unlawful search, seizure and detention of Defendant and are therefore inadmissible. No intervening events broke the causal chain of connection between the unlawful search of the vehicle and the statement made by Defendant and the statement was inextricably connected to the unlawfully seized evidence. Therefore, Defendant's motion to suppress statements made to police and the District Attorney's office is granted.

Based on the foregoing, Defendant's motion is granted in its entirety.

This opinion constitutes the Decision and Order of the Court.

Dated: May 18, 2016
Brooklyn, New York



HON. JOHN G. INGRAM
Justice of the Supreme Court